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CHC-38

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 419 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.419/2001

APPELLANT Ramdayal, aged about 27 years, s/o Dharampal, r/o village Rakya, P.S. & Tahsil Baikunthpur, Distt. Korea (C.G) (C.G.)

Versus

RESPONDENT State of Chhattisgarh

CRIMINAL APPEAL u/s 374(2) OF THE CODE OF CRIMINAL PROCEDURE

Appearance:
Smt. Renu Kochar, counsel for the appellant.
Smt. Anju Ahuja, Deputy Govt. Advocate for the State

D.B.: HON'BLE SHRI L.C. BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(20.08.2007)

L.C. Bhadoo, J:-

(1) The accused appellant has preferred this appeal challenging the legality & correctness of judgment of conviction and order of sentence dated 21.4.2001 passed by the First Additional Sessions Judge, Baikunthpur, in Session Trial No.154/2000 whereby the learned Addl. Sessions Judge after holding the accused appellant guilty for commission of the offence punishable u/s 302 & 201 I.P.C., sentenced him to undergo imprisonment for life and R.I. for

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आदेश पत्रक (पूर्वानुबद्ध)

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one year respectively whereas this accused appellant was acquitted of the charges u/ss 147, 148, 302/149 & 201/149 I.P.C. However, the learned Addl. Sessions Judge, acquitted the other co-accused Budhram, Paras, Daulatram, Jeevanlal & Shivbhajan of the offence punishable under section 147, 148, 302 read with section 149 & section 201 read with section 149. Similarly, the accused Radhika Prasad and Sitaram have also been acquitted of the charges offence u/s 201, 302 I.P.C.

(2) The case of the prosecution, in brief, is that at about 9 a.m. in the morning of 21.1.2000 Jugadhir Pandey (since deceased) alongwith witness Bhagwan Das had gone to village Rakaiya for bringing goat meat from the residence of Chhaua Rajwar where the accused Ram Dayal (present appellant), Budhram, Rajaram, Chhunni and others were present. Jugadhir, Ram Dayal, Chhunni & Rajaram started quarreling and they indulged in the *marpit* with *lathi* and hands. On asking by Nanu, Bhagwandas ran away and informed the wife of Jugadhir about the incident. When Jugadhir did not return to house Suhkni Bai, wife of Jugadhir went to village Rakaiya in order to enquire from Rajaram. Rajaram replied that Budhram, Ram Dayal, Chhunni and one another committed murder of Jugadhir and they have kept the body of deceased somewhere else. The missing report Rosnamcha Sanha was lodged by Bhagwan Das on 24.1.2000 whereby the missing report was entered as Ex.P.11C. Based on this report, the enquiry was started by the Police Baikunthpur to search the whereabouts of Jugadhir. During the investigation, the accused

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आदेश पत्रक (पूर्वानुबद्ध)

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were taken into custody and were interrogated, on which the accused Ram Dayal @ Nanhu gave memorandum Ex.P.16 that after committing the murder of Jugadhir, the body was thrown in the river, but as the body stuck with the bushes in the river, therefore, again the body was tied with the help of 'Sika' (net of the rope meant for carrying goods by the villagers) with heavy stones and has been thrown in the *Gej* tank. Notice Ex.P.12 was given to the witnesses and in their presence, the investigation Officer reached to the Tank and the body was searched and taken out from the tank by the sailors with the help of harrows. It was found that the body was tied with the two heavy stones weighing 30 Kgs., each. The seizure memo of the Sika Ex.P.25 was prepared at the instance of the other accused persons. The club was recovered and the accused Ram Dayal also gave memorandum Ex.P.15 regarding place where he kept the knife i.e. the weapon of offence and the knife was recovered under Ex.P.17. The clothes of the accused Daulat Ram were seized under Ex.P.19 along with a *Danda* and the clothes of the accused Paras were seized under Ex.P.20, clothes of Shivbhajan under Ex.P.21, clothes of the accused appellant was seized under Ex.P.23, the head hair stained with blood was seized in front of the house of Baldeo, one club was seized at the instance of the accused Jeevanlal. The inquest Ex.P.13 was prepared on the body of deceased. The body was sent for postmortem examination to Community Health Center, Baikunthpur, where Dr. Ashish Karan (P.W.8) and another Doctor Dr. D.K.Chikanjury conducted the postmortem and they noticed 3

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injuries on the forehead, an incised wound on the front of the head and two injuries on the left side of the forehead, one lacerated wound on the mouth, one lacerated wound on the right parietal area in size of 2" x ½" x ¼" which was obliquely placed, a long incised wound over abdomen exposing viscera and intestines in size of 13" x 8" and deeply injuring to lever and stomach. He opined that the cause of death was shock resulting from multiple incised wounds mainly due to abdominal injury and the death was homicidal in nature. They prepared the postmortem report vide Ex.P.9. The seized articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, from where the report Ex.P.47-A was received. The blood was found on the knife as also on the shirt and full pant of the accused. After completion of the investigation, charge sheet was filed against 7 accused persons including the present applicant for commission of the offences punishable u/ss 147, 148, 302 read with section 149 and 201 read with section 149 I.P.C., in the court of C.J.M., Baikunthpur, who in turn committed the case to Sessions Judge, Sarguja, from where the learned Addl. Sessions Judge received the case on transfer for trial.

(3) The prosecution in order to establish the charges against the accused persons examined 16 witnesses. The statement of the accused persons were recorded u/s 313 Cr.P.C. , in which each of the accused denied the charges framed against him and they also examined two defence witnesses namely Gambhir Sai (D.W.2) and

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Rajkumar Chauhan (D.W.1), both are the police personnel regarding criminal case pending against the deceased for commission of the offence u/s 394, 354, 307, 450, 380 & 458 I.P.C. Even the copies of crime register were produced vide Ex.D-1A, D-2A, D-3A & D-4A showing that the accused was involved in certain number of criminal cases.

(4) The learned Addl. Session Judge, after hearing the counsel for the parties, acquitted all the other accused persons of the charges levelleved against them, however, convicted the present accused appellant u/s 302 & 201 IPC as aforesaid.

(5) We have heard Smt.Renu Kochar, counsel for the appellant and Smt.Anju Ahuja, Deputy Govt. Advocate for the Sate.

(6) Smt. Renu Kochar, learned counsel for the appellant argued that in this case, there is no ocular evidence and the accused has been convicted merely on the basis of recovery of the body at the instance of the accused as also the recovery of weapon of offence i.e., knife at his instance. She further argued that even these recoveries at the instance of the accused have not been established and on the same set of evidence; the other accused persons have been acquitted.

(7) On the other hand, learned State Counsel supported the judgment of the trial Court.

(8) We have scrutinized the judgment of the trial Court and evidence available on the trial court record. In this case, there is no

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ocular evidence and the accused appellant has been convicted based on the recovery of dead body and the knife. In this case, most of the witnesses have turned hostile. P.W.1 Rajaram, has simply stated that on the occasion of Chherta festival, goat meet was prepared at the residence of Nanchhaua where he alongwith Bhaiya Ram , Devlal, Manbharu were present and the accused persons were not there. P.W.3 Congress Ram has also turned hostile and he has stated that body of a person was taken out from the *Gej* tank. On the site, nobody had disclosed that where the body is lying. He saw that the body was taken out from the tank which was a male body. There was a stone tied with the body. Nobody disclosed at the site that whose body was this. P.W.4 Kadam Kunwar has also turned hostile. He has stated that he does not know about the quarrel or dispute. P.W.5 Manbharu Ram has also turned hostile. He has stated that deceased Jugadhir never came to the village Rakaiya. P.W.6 Bhaiyaram has also turned hostile. He has stated that he saw no body in the village Rukaiya. P.W.7 Devlal has also turned hostile. He has stated that he does not know Jugadhir.

(9) The prosecution has tried to establish the crime against the accused based on the following circumstantial evidence.

(i) That the dead body of Jugadhir was recovered at the instance of the accused appellant Ram Dayal from the *Gej* Tank.

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(ii) That the weapon of offence i.e., Knife and full pant and shirt stained with the blood of the accused were recovered at his instance.

(10) As per the settled law, in order to rest conviction of an accused based on the circumstantial evidence, the prosecution is required to establish the following points in view of the decision of the Apex Court rendered in the matter ***Dhananjoy Chatterjee –Vs- State of W.B.***[1], which is quoted below:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

(11) Now we shall proceed to scrutinize the evidence in order to ascertain as to whether the prosecution has been able to establish the complicity of the accused in the commission of the murder of Jugadhir based on the circumstantial evidence.

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[1] (1994) 2 SCC 222

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(12) As far as the recovery of the body of Jugadhir at the instance of the accused is concerned, the Investigating Officer, D.P. Mishra, (P.W.15), Sub Inspector, has stated that while in police custody the accused gave memorandum (Ex.P.16) on 29.1.2000 at about 1 p.m. A perusal of this memorandum shows that there are no signatures or thumb impression of the accused on the memorandum. As per the decision of the Apex Court in the matter of ***Jackaran Singh, Appellant –vs- State of Punjab***[2] the absence of the signatures or thumb impression of the accused on the memorandum statement renders such statement unreliable and in Para 8 the court the Supreme Court held that the absence of the signatures or thumb impression of an accused on the disclosure statement recorded u/s 27 of the Evidence Act detracts materially from the authenticity and reliability of the disclosure statement. Therefore, on the basis of the above decision of the apex Court, since the signature of the accused or his thumb impression is not there on the disclosure memorandum(Ex.P.16), therefore, the reliability of this disclosure memorandum becomes suspicious. One of the witnesses P.W.11 Jalim Singh has been examined regarding this disclosure memo and Shiv Lal has not been examined. Jalim Singh is none-else than the nephew of the deceased. How he went to the place is not disclosed and this witness is a witness to all the recoveries from most of the persons. He is a resident of village Jagdishpur. How this witness

[2] AIR 1995 S.C. 2345

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	reached to the concerned place is not disclosed by this witness. He has stated that the accused disclosed that he along-with other accused persons Budhram, Daulatram, Radhika Sitaram, Shivbhajan committed the murder of Jugadhir (all of them have been acquitted) and stated that the body was thrown in the river. However, the body stuck with the bushes, therefore, he along with co-accused Radhika Prasad, Sitaram, Jeevanlal, took out the body from the river and after tying with the some other stick and stone, they threw the same in the *Gej* tank, thereafter he took them to the place where the body was thrown. The other witnesses, as mentioned earlier, have turned hostile and have stated that nobody pointed out that at what place and from where the body was recovered. P.W.15, the Investigating Officer D.P.Mishra has also stated that the accused gave memorandum Ex.P.16 and thereafter the accused took them to the *Gej* Tank and after searching by sailors with the help of harrows, the body could be detected. In this case, no seizure memo regarding discovery of facts pursuant to the information given by the accused was prepared, only an inquest Ex.P.13 was prepared. It has no where been mentioned that the body was recovered from the place disclosed by the accused. **(13)** From the facts emerging in the evidence on record, the prosecution has utterly failed to establish that by memorandum Ex.P.16, accused exhibited the knowledge or the mental awareness as to its existence at a particular place and therefore, it cannot be said that as per the evidence of the prosecution the accused had the	

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knowledge about the place from which object was produced. As such, for the foregoing reasons the prosecution has failed to establish that the accused have the knowledge about the place from where dead body of Jugadhir was recovered and same was informed by him. Therefore the finding of the trial Court that the body was recovered at the instance of the accused cannot be sustained. Even the memorandum of co-accused Radhika Prasad was recorded (Ex.P.14) on 27.3.2000 by the I.O. regarding throwing of the body in the tank.

(14) As far as the recovery of the knife, weapon of offence, at the instance of the accused is concerned, there is a memorandum Ex.P.15 said to have been given by the accused, the same also does not bear the signature of the accused and on the same principle it has been held by the Apex Court in the matter of *Jackaran Singh (supra)* that on account of absence of the signatures or thumb impression this document does not inspire confidence and no reliance can be placed. In this document, it has been mentioned that after attacking the deceased with knife, he along with Jeevanlal, Paras, Shivbhajan, Daulatram, Bodhram thrown the body in the *Gej* tank and the knife was thrown in the said tank and he can get recovered the same. In seizure memo Ex.P.17 it has been mentioned that the knife was seized on being produced by the accused Ram Dayal. It has no where been mentioned in these memos Ex.P.15 & P-17 that from where the accused brought the knife and where he took the I.O., to get the knife recovered. Even though the I.O., P.W. 15

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D.P.Mishra has stated that the accused took him near the river and produced the knife, he has not stated that from where the accused picked up the knife and handed over to him. Unless the place from where the knife was recovered in the first instance was disclosed by the accused and thereafter pursuant to that disclosure, the object recovered from that place is established and proved with cogent evidence, such recovery cannot be made basis for connecting the accused with the crime in question. Therefore, recovery of this knife is also doubtful at the instance of the accused.

(15) Now coming to the question that the blood was found on the clothes of the accused, there is no Serologist report to show that the blood was human blood and that too of the blood group of the deceased, therefore, without such cogent and clear evidence, it is difficult to connect the accused with the crime in question. There is no other evidence to connect the accused with the crime in question as the prosecution has utterly failed to produce any evidence to establish that anybody saw the accused attacking the deceased or carrying the body. As such the finding of the trial Court convicting the accused for the commission of the offence u/s 302 of the I.P.C., for committing the murder of Jugadhir as also causing disappearance of evidence thereof in order to escape from the legal punishment u/s 201 of the I.P.C., cannot be sustained.

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	(16) In the result, the appeal succeeds and the conviction and sentence imposed upon the accused appellant u/s 302 & 201 of I.P.C. are set aside. He is acquitted of the said charges. It is stated that the accused is in detention since 30.01.2000 till today, therefore, he be set at liberty forthwith, if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**
Rao		